IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1628 OF 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

==========

GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
KANJIBHAI BABARBHAI DHODIA & ANR. - Respondent(s)

==========

Appearance :
Ms. Maya Desai for Shri M.D. Pandya for Appellant(s).
Shri Sunil Mehta for Shri S.K. Bukhari for Respondent No.1.
None for respondent No.2 though served.

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/06/2007

ORAL JUDGMENT

The Gujarat State Road Transport Corporation being aggrieved by the award dated 13th December, 1983 passed by the Motor Accident Claims Tribunal (Main), Surat in M.A.C.P. No.335 of 1982 is

before this Court.

2. The short facts leading to the present appeal are that the respondent No.1 filed the claim petition before the learned Tribunal submitting, *inter alia*, that the offending bus bearing registration No. GRT-9931 belonging to the appellant was driven rashly and negligently by respondent No.2, Ramsingh Fulji Chaudhary, and it had caused the accident, as a result of which the claimant suffered injuries. The appellant-Corporation and the driver denied their absolute liability and submitted that the said bus and the driver were not involved in the accident. From the side of the claimant, but, for the claimant, no other witness was examined. From the side of the non-claimants, the driver – Ramsingh was examined. It was stated by the claimant that at the time of accident, the only bus to pass from that road was Vyara-Unai bus. The learned Tribunal below, though was alive to the acquittal of the present respondent No.2-driver, held that in view of the statement of the driver that he had crossed the particular area in his bus, the said bus was involved in the accident.

3. In the opinion of this Court, even on the strength of preponderance of probabilities, it cannot be held that the bus was involved in the said accident.

4. Even otherwise, from the injury report, it would appear that

the claimant had suffered a contused lacerated wound of ½" and ½" on the forehead just above the right eyebrow and had a piercing chest injury in the lateral sternum at the second left space. If an injury is a piercing injury, then, it can be caused by a sharp or pointed weapon or object. The injury on the chest would presuppose an attack or an onslaught from the front. If a bus hits a person on the chest, then, apart from the piercing injury, the injured would suffer other injuries also. If the piercing injury is caused by either side of the bus, then, there would be a further cutting injury. If the vehicle is crossing and the piercing object, after entering the body to some millimetres, would cut other parts of the body, the nature of injuries *prima facie* do not show that those could be caused in a vehicular accident.

5. Taking into consideration the totality of the circumstances, the evidence of the claimant and the doctor, I am unable to hold that the bus bearing No. GRT-9931 driven by the driver was involved in the accident.

6. The award made by the learned Tribunal is hereby set aside. The appeal is allowed. No costs.

[R.S.Garg, J.]

*kamlesh**